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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

JUN 27 2003

File: WAC 01 151 52993 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit corporation affiliated with the Sikh religion. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a ragi (Sikh minstrel)¹ at a monthly salary of \$1,000 plus board.

The acting director denied the petition, finding that the beneficiary's intermittent part-time volunteer work was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a two page letter with additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

¹ The petitioner indicated in a letter dated February 7, 2001 to the Bureau that it intended to hire the beneficiary as a priest as well as a Ragi.

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a non-profit corporation that is affiliated with the Sikh religion. The beneficiary is a native and citizen of India. The petitioner states that it has an average congregation of 300 with 500 on major holidays. The petitioner states that it has no paid employees. The record indicates that the beneficiary last entered the United States on October 2, 2000 as a nonimmigrant visitor for pleasure (B-2) and departed on April 28, 2001.

The record of proceeding contains the petition and supporting documents, a request for additional evidence and the petitioner's response to the request, the acting director's decision, and the appeal documents.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on March 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least March 22, 1999.

The petitioner submitted a copy of the beneficiary's resume, the principles of the Sikh Dharma Brotherhood, unidentified photographs, a letter from the president of the petitioning organization expressing its intent to sponsor the beneficiary as a priest to serve within its Sikh Gurdwara Temple as a "Jatha to play Sikh music on a daily basis, to conduct aspects of our Gurdwara service, and to teach classes on Sikh music and the Sikh religion to both adults and children." The petitioner included a copy of its balance sheet as of January 31, 2001 and a brief statement about the petitioning organization and its Sikh temple (Gurdwara). The petitioner also submitted a certificate stating that the beneficiary had been "ordained as [a] Sikh Missionary."

In response to a request for additional evidence, the petitioner provided a more detailed summary of the beneficiary's work

experience and stated that the Ragi Jatha missionaries are supported by donations. The petitioner indicated that it intended to pay the beneficiary \$1,000 a month plus board if the petition was approved. The petitioner included a letter from its president stating that the beneficiary had served in the capacity of "guest Ragi" since October 2, 2000.

The acting director determined that the beneficiary had worked as a guest ragi at different Sikh Gurdwara temples overseas from 1999 to October 1, 2000, and as a guest ragi for the petitioner since October 1, 2000. The acting director determined that the petitioner had not paid the beneficiary for his services and that the beneficiary's work experience had not been full-time or continuous.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been continuous salaried employment in order to qualify as well.

On appeal, counsel for the petitioner asserts that the beneficiary is a minister, and therefore is not required to have full-time experience in the proffered position. Counsel submits letters from Sikh officials that purportedly show that a Ragi is a minister. Counsel's arguments are not persuasive. The term "minister" is defined in the regulations.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Counsel asserts that a ragi is a minister. The evidence on the record shows that a ragi is a Sikh musician who sings compositions from the Guru Granth Sahib (the Sikh holy book). The petitioner indicates that it intends to utilize the services of the beneficiary as a ragi and as a priest. The petitioner has not shown that the beneficiary is authorized or trained to conduct religious worship. Sikh ragis do not take vows and they are not ordained. The petitioner also provided the Bureau with the beneficiary's certificate of ordination as a Sikh missionary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.